

PRIVATE WIRELESS MINING COALITION

Presentation Dated March 24, 2004
WT Docket No. 99-87, RM-9332

BASIC PREMISE

Non-Public Safety Rural Area Licensees Should
Not Be Unnecessarily Constrained From Filing
New/Expansion 25 kHz Applications, And
Should Be Permitted to Continue to File Such
Applications Until June 30, 2012

OVERVIEW OF REASONS SUPPORTING THE BASIC PREMISE

- ◆ Substantial Harm Will Otherwise Be Suffered In Numerous Respects
- ◆ No Public Interest Reasons Warrant the Imposition of Licensing Restrictions Earlier than the Basic Premise Requires
- ◆ Imposing Licensing Restrictions Earlier than the Basic Premise Requires is Inconsistent with the Purpose of this Proceeding and Commission Policy

TWO ALTERNATIVE METHODS OF SATISFYING THE BASIC PREMISE

1. Impose Identical Licensing Restrictions on Both Rural and Urban Non-Public Safety Licensees (i.e., Impose the June 30, 2012 Interim Date On All Non-Public Safety Licensees)
2. Impose a Rural/Urban Distinction (i.e., Impose An Earlier Interim Date on Urban Area Licensees While Maintaining the June 30, 2012 Interim Date for Rural Area Licensees)

Part I

**Reasons Why Non-Public Safety Rural
Area Licensees Should Not Be
Unnecessarily Constrained From Filing
New/Expansion 25 kHz Applications, And
Should Be Permitted to Continue to File
Such Applications Until June 30, 2012**

Accelerated 12.5 kHz Conversions Should Not Be Imposed On Rural Area Licensees Because:

- ◆ Such Accelerated Conversions Would (i) Exacerbate Risks to Seamless Interoperability, (ii) Increase Risk to Employee Safety, (iii) Disrupt Business Operations, (iv) Increase Environmental Risks, and (v) Impose Unnecessary Economic Harm
- ◆ The Purpose of this Proceeding Is To Decrease Spectrum Congestion In The Affected Bands, But There Is No Significant Spectrum Congestion in the Affected Bands in Rural Areas
- ◆ Artificially Constraining The Use of Uncongested Spectrum and Imposing Unnecessary Regulations on Licensees is Contrary to Commission Policy

Substantial Harm Resulting From Accelerated 12.5 kHz Conversions

- ◆ Exacerbating Risks to Seamless Interoperability
- ◆ Increased Risk to Employee Safety
- ◆ Disruption to Business Operations
- ◆ Increased Environmental Risks
- ◆ Unnecessary Economic Harm

Substantial Harm: Exacerbating Risks To Seamless Interoperability

- ◆ Seamless and Unimpaired PLMRS Communications are Critical In Preventing and Promptly Responding to Accidents Internally, for Communication with Public Safety Units, and for Performance of Essential Business Activities
- ◆ The Ability to File New and Expansion Applications is a Necessity for Licensees, Including the PWMCM Members. Thus, the Commission's Licensing Restrictions Would Require Licensees to Attempt Full-Scale 12.5 kHz Conversions on An Accelerated Basis
- ◆ Because Single Mode 25 kHz Units are Incompatible with 12.5 kHz Equipment, Massive and Complex Accelerated 12.5 kHz Conversions Would Exacerbate the Risks to Interoperability

Substantial Harm: Increased Risk to Employee Safety

- ◆ Employees of Rural Area Licensees Work in Remote Locations, Often Under Very Dangerous Conditions
- ◆ In Rural Areas, Commercial Wireless Coverage is Often Non-Existent or Unreliable at Best
- ◆ PLMRS Systems Serve as the Rural Equivalent of E-911 by Permitting Instant Communication In the Event of an Emergency and Can Often be the Difference Between Life, and Death or Significant Injury
- ◆ Requiring Licensees to Attempt Massive, Complex, Accelerated 12.5 kHz Conversions Undermines Seamless Interoperability and Significantly Exacerbates Risks to Employee Safety

Substantial Harm: Disruption To Business Operations

- ◆ PLMRS Systems Are Critical for the Performance of Essential Business Activities
- ◆ PLMRS Systems Are Used By Licensees, Including the PWMC Members, On a 24 X 7 Basis
- ◆ Requiring Licensees to Attempt Massive, Complex, Accelerated 12.5 kHz Conversions Would Unnecessarily Increase the Number and Duration of Major Disruptions to Operations and Shut-Downs to Fully Operational Facilities

Substantial Harm: Increased Environmental Risks

- ◆ Many Licensees Utilize Hazardous Materials and Other Chemicals in the Performance of their Core Business Activities
- ◆ Chemical Spills or Other Environmental Emergencies Often Must Be Immediately Communicated to Internal and External First Responders in Order to Mitigate Environmental Damage
- ◆ Requiring Licensees to Attempt Massive, Complex, Accelerated 12.5 kHz Conversions Undermines Seamless Interoperability and Unnecessarily and Significantly Exacerbates Environmental Risks

Substantial Harm: Unnecessary Economic Harm

- ◆ Requiring Licensees to Attempt Massive, Complex, Accelerated 12.5 kHz Conversions Would Result In Licensees:
 - ◆ Discarding Fully Operational Equipment That is Not Near the End of Its Expected Lifespan, and Unnecessarily Incurring Up To Millions of Dollars in Costs for New Equipment, for Each System Conversion
 - ◆ Reallocating Substantial Labor, Management and Other Critical Resources from the Performance of Core Business Activities, for Each System Conversion
 - ◆ Unnecessarily Performing Extraordinarily Costly Double Conversions (first from 25 kHz to 12.5 kHz, and second from 12.5 kHz to 6.25 kHz) for Each System, If The Commission Adopts Mandatory 6.25 kHz Migration Requirements Either Now or In the Future

The Purpose Of This Proceeding Is To Decrease Spectrum Congestion In The Affected Bands

- ◆ “It is [the Commission’s] objective here to promote migration to narrowband technology in order to alleviate congestion, while also accounting for the needs of 25 kHz incumbents.” Second R&O at ¶24 (FCC 03-34).
- ◆ “Over the long term, implementation of the rules adopted in the Second Report and Order is intended to relieve congestion and clear space for additional licensees in the PLMR bands below 512 MHz.” Stay Order at ¶8 (FCC 03-306).
- ◆ AMTA has confirmed that its initial proposal in this proceeding was intended to accomplish a migration for “licensees in markets with traditionally inadequate spectrum resources.” AMTA Comments, p.5 (March 5, 2001).

There Is No Significant Spectrum Congestion in the Affected Bands in Rural Areas

- ◆ No Rural Spectrum Congestion: Examples of Support from the Commission
 - ◆ “Spectrum use in rural areas is generally extremely low....” Notice of Proposed Rule Making and Order, ET Docket No. 03-108, p.13 (December 30, 2003) (FCC 03-322).
 - ◆ In its Pending Proceeding Examining the Deployment of Spectrum-Based Services in Rural Areas, the Commission Recognized the Lack of Significant Spectrum Congestion in Rural Areas. Notice of Proposed Rule Making, WT Docket No. 02-381, p.25-26 (October 6, 2003) (FCC 03-222).
 - ◆ “Interference and other technical rules should generally be calibrated to conditions in areas where spectrum is likely to be in the greatest demand and the most congested, which will typically be in urban areas.” Spectrum Policy Task Force Report, ET Docket No. 02-135, p. 59.

There Is No Significant Spectrum Congestion in the Affected Bands in Rural Areas

- ◆ No Rural Spectrum Congestion: Examples of Support from Industry
 - ◆ PWMC
Petition for Reconsideration, p. 5-6 (Aug. 18, 2003)
Opposition to Petition for Reconsideration of AMTA et. al., p. 3-6 (Sept. 25, 2003)
 - ◆ The National Rural Electric Cooperative Association
Ex Parte Comments, p. 2 (Sept. 23, 2003)
 - ◆ The National Rural Water Association
Ex Parte Comments, p. 2 (November 11, 2003)

There Is No Significant Spectrum Congestion in the Affected Bands in Rural Areas

- ◆ No Rural Spectrum Congestion: Examples of Support from AMTA
 - ◆ AMTA initially recognized that the rural migration deadline should be later than the urban deadline. In fact, AMTA initially requested that the rural deadline be December 31, 2020. See, e.g., AMTA Petition for Rulemaking, p.6 (June 19, 1998)
 - ◆ AMTA further recognized in its initial filings that “in more rural areas where demand for spectrum is relatively limited”, even the proposed 2020 migration deadline might have been earlier than necessary. Id. at 8.
 - ◆ AMTA does not oppose a Commission decision to impose separate migration deadlines on rural and urban licensees. AMTA Reply to Oppositions, p.6 (October 6, 2003).

Artificially Constraining The Use of Uncongested Spectrum and Imposing Overbroad and Unnecessary Regulations is Contrary to Commission Policy

- ◆ Imposing massive, and often multiple, accelerated 12.5 kHz conversions on rural area licensees would “artificially...constrain the use of uncongested spectrum”. Such result would be in direct contravention of the recommendations of the Task Force Report. Spectrum Policy Task Force Report, ET Docket No. 02-135, p. 59.
- ◆ Rules determined to be “overbroad means of promoting the public interest” must be rejected by the Commission. See e.g., Report and Order, MM Docket No. 91-221, FCC 99-209, ¶89 (1999).
- ◆ The Commission “recognize[s] that any unnecessary regulation places a corresponding, unnecessary burden” on subject licensees. Report and Order, CC Docket No. 00-199, FCC 01-305 (2001).

**The Compelling Public Interest Reasons For
Imposing Accelerated 12.5 kHz Conversions
On Rural Area Licensees In Light Of The
Demonstrated Harm To Licensees And The
Commission's Countervailing Policies**

None

Part II

PWMC's Alternative Proposals

Proposal Summary

1. Retain the 1/1/2013 Deadline for Migration to 12.5 kHz in Affected Bands for All Non-Public Safety Licensees.
2. Either:
 - A. Permit the Continued Filing of New/Expansion 25 kHz Applications by all Non-Public Safety Licensees (Rural and Urban) Until June 30, 2012;

***or, in the Alternative, if the Commission
Chooses to Adopt an Earlier Interim Date for Urban Area Licensees***
 - B. Permit the Continued Filing of New/Expansion 25 kHz Applications by Non-Public Safety Rural Area Licensees Until June 30, 2012.
3. Dismiss With Prejudice Any New/Expansion 25 kHz Application of a Non-Public Safety Entity Pending as of 1/1/2013.
4. Permit the Manufacture/Importation of 25 kHz Equipment until 1/1/2011.

Why Both Of PWMC's Alternative Proposals Are Appropriate And Consistent With The Basic Premise

- ◆ Both of PWMC's Alternative Proposals Ensure that Non-Public Safety Rural Area Licensees Will Not Be Unnecessarily Constrained From Filing New/Expansion 25 kHz Applications, As They Would Be Permitted to Continue File Such Applications Until June 30, 2012.
- ◆ In Part I, PWMC Demonstrated that the Filing of New/Expansion 25 kHz Applications Should Not Be Unnecessarily Constrained, Particularly in Rural Areas. Accordingly, if the Commission Chooses to Impose Identical Licensing Restrictions on Both Rural and Urban Non-Public Safety Licensees, the Commission Should Permit All Non-Public Safety Licensees (Rural *and* Urban) to Continue Filing New/Expansion 25 kHz Applications Until June 30, 2012. Such a Solution Would Also be in the Public Interest Because: (i) It Would Retain a 1/1/2013 Date-Certain For Full 12.5 kHz Migration; (ii) It Would Ensure that Rural Area Licensees Are Not Unduly Constrained; and (iii) Some of the Harms to Rural Area Licensees Described in Part I Would Also Be Applicable to Urban Area Licensees if they Were Subjected to Accelerated 12.5 kHz Conversions.
- ◆ Given that PWMC Has Demonstrated that the Filing of New/Expansion 25 kHz Applications Should Not Be Unnecessarily Constrained, Particularly in Rural Areas, if the Commission Requires An Accelerated Conversion for Urban Area Licensees, a Solution Containing a Rural/Urban Distinction is Clearly in the Public Interest, and Rural Area Licensees Should Be Permitted to Continue File Such Applications Until June 30, 2012.

Alternative 1: PWMC's Proposed Draft Rule Revisions Applicable to All Non-Public Safety Licensees (For A Solution Without a Rural/Urban Distinction)

Section 90.209 is amended by revising paragraph (b)(6) and adding paragraphs (b)(7) and (b)(8) as follows:

§90.209 Bandwidth limitation.

(6) Beginning July 1, 2012, the types of applications specified in paragraphs (b)(6)(i) and (b)(6)(ii) for the 150-174 MHz and/or 421-512 MHz bands will not be acceptable for filing if the applicant utilizes channels with an authorized bandwidth exceeding 11.25 kHz:

- (i) new applications filed by non-public safety applicants; and
- (ii) modification applications filed by non-public safety applicants that, if granted, would increase the station's authorized interference contour.
- (iii) See §90.187(b)(2)(iii) and (iv) of this chapter for interference contour designations and calculations.
- (iv) Applications submitted pursuant to this paragraph must comply with frequency coordination requirements of §90.175 of this chapter.

(7) Any validly operating station in the 150-174 MHz and/or 421-512 MHz bands may be transferred, assigned or renewed pursuant to the requirements of this chapter notwithstanding the pendency of an application that was filed pursuant to paragraph (b)(6)(i) or (ii).

(8) Beginning January 1, 2013, the Commission will dismiss with prejudice any pending applications for facilities in the 150-174 MHz and/or 421-512 MHz bands that propose to utilize channels with an authorized bandwidth exceeding 11.25 kHz, including but not limited to any pending applications that were filed pursuant to paragraph (b)(6)(i) or (ii).

Section 90.203 is amended by revising paragraph (j)(10) as follows:

§90.203 Certification required.

(10) Transmitters designed to operate in the 150-174 MHz and 421-512 MHz bands that are not equipped with a single-mode or multi-mode function permitting operation with a maximum channel bandwidth of 12.5 kHz or do not meet a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth shall not be manufactured in, or imported into, the United States after January 1, 2011

Alternative 2: PWMC's Proposed Draft Rule Revisions Applicable to Non-Public Safety Rural Area Licensees (For A Solution With a Rural/Urban Distinction)

Section 90.209 is amended by revising paragraph (b)(6) and adding paragraphs (b)(7) and (b)(8) as follows:*
§90.209 Bandwidth limitation.

(6) Beginning July 1, 2012, the types of applications specified in paragraphs (b)(6)(i) and (b)(6)(ii) for the 150-174 MHz and/or 421-512 MHz bands will not be acceptable for filing if the applicant utilizes channels with an authorized bandwidth exceeding 11.25 kHz and the proposed facilities are located in a rural area:

- (i) new applications filed by non-public safety applicants; and
- (ii) modification applications filed by non-public safety applicants that, if granted, would increase the station's authorized interference contour.
- (iii) Proposed facilities will be considered to be located in a rural area under paragraph (b)(6) if both the area of operation of the proposed facilities and the service contour of the proposed facilities do not overlap a circle with a radius of 113 km (70 mil.) from the geographic coordinates specified for the urban areas listed in §90.741.
- (iv) See §90.187(b)(2)(iii) and (iv) of this chapter for interference and service contour designations and calculations.
- (v) "Area of operation", as specified in paragraph (b)(6)(iii), is the area of operation specified in the applicant's FCC Form 601. Where an applicant's proposed area of operation is specified on FCC Form 601 as "Nationwide (N)" or "Continental US (U)", the applicant's proposed facilities will not be deemed to be located in a rural area under paragraph (b)(6). Where an applicant's proposed area of operations is specified on FCC Form 601 as "Statewide Area of Operation (S)", the applicant's proposed facilities will not be deemed to be located in a rural area if the proposed facilities are to operate in a state identified as containing an urban area in §90.741.
- (vi) Applications submitted pursuant to this paragraph must comply with frequency coordination requirements of §90.175 of this chapter.

(7) Any validly operating station in the 150-174 MHz and/or 421-512 MHz bands may be transferred, assigned or renewed pursuant to the requirements of this chapter notwithstanding the pendency of an application that was filed pursuant to paragraph (b)(6)(i) or (ii).

(8) Beginning January 1, 2013, the Commission will dismiss with prejudice any pending applications for facilities in the 150-174 MHz and/or 421-512 MHz bands that propose to utilize channels with an authorized bandwidth exceeding 11.25 kHz, including but not limited to any pending applications that were filed pursuant to paragraph (b)(6)(i) or (ii).

Alternative 2: PPMC's Proposed Draft Rule Revisions Applicable to Non-Public Safety Rural Area Licensees (For A Solution With a Rural/Urban Distinction) - CONTINUED

Section 90.203 is amended by revising paragraph (j)(10) as follows:

§90.203 Certification required.

- (10) Transmitters designed to operate in the 150-174 MHz and 421-512 MHz bands that are not equipped with a single-mode or multi-mode function permitting operation with a maximum channel bandwidth of 12.5 kHz or do not meet a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth shall not be manufactured in, or imported into, the United States after January 1, 2011.

* The proposed draft rule revision for Section 90.209 on the previous page addresses the rules that would – under PPMC's proposal - apply to rural area applicants in a solution that incorporates a rural/urban distinction. PPMC has, in its prior pleadings in this proceeding, set forth specific recommendations as to how – in a solution that incorporates a rural/urban distinction - to address these 25 kHz licensing issues for applicants proposing facilities that overlap with an urban area. See PPMC's "Petition For Reconsideration" dated August 18, 2003, p.21-22; PPMC's "Opposition To The Petition For Reconsideration Of The American Mobile Telecommunications Association, Et. Al." dated September 25, 2003, p.13-15.

The Alternative Involving A Rural/Urban Distinction is a Very Conservative Bright Line Test and Would Reduce Administrative Burdens on the Commission

- ◆ PWMC's Alternative Involving a Rural/Urban Distinction is Responsive to the Commission's Concerns in the Second R&O Regarding the Use of a Rural Definition Because it:
 - ◆ Contains a Clear and Explicit Definition of Rural Area Facilities
 - ◆ Defines Proposed Facilities as Urban Unless Both the Area of Operation and the Service Area Contour of the Proposed Facilities Do Not Intersect At All Any 70 Mile Urban Area Contours
 - ◆ Defines Proposed Facilities as Urban If They Even Slightly Fall In Urban Areas
- ◆ The Proposed Rural Definition Will Reduce Administrative Burdens on the Commission Because Without the Requested Relief the Commission Would Likely Receive Numerous and Continuous Legitimate Waiver Requests from Rural Area Licensees Whose Proposed 25 kHz Facilities Would Not Decrease Spectrum Efficiency and Would Not Add to Spectrum Congestion. Such Waiver Requests Would be Necessary to Prevent Rural Area Licensees from Incurring the Types of Harm Described in Part I.

Adoption Of The Alternative Involving A Rural/Urban Distinction Would Be Consistent With Prior Commission Practice

- ◆ The Alternative Involving A Rural/Urban Distinction is Consistent With Prior Commission Practice as to:
 - ◆ Reliance on a Buffer Zone Around the Geographic Centers of Objectively Identifiable Urban Markets. See 47 C.F.R. §90.187. See also, Report and Order, WT Docket No. 01-146, FCC 03-35, ¶32 (2003) (applying a 50 mile radius around the Section 90.187 urban markets to the issue of low power operations in the 450-470 MHz band) (“This table has been used for the 220-222 MHz band, with notable success. [The list] provides licensees...with a simple and lucid reference of applicability.”)
 - ◆ Reliance on contour analyses and intersections in determining presence of harmful interference. See, Report and Order, WT Docket No. 01-146, FCC 03-35, ¶29 (2003); See also 90.187(b)(ii), (iii).